

1-1-1992

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### Recommended Citation

Linwood Gunn, *MOTOR VEHICLES AND TRAFFIC Driver's Licenses, Uniform Rules of the Road: Change Definitions, Penalties, and Procedures Relating to Driving under the Influence of Alcohol and Drugs*, 8 GA. ST. U. L. REV. (1992).  
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## MOTOR VEHICLES AND TRAFFIC

### *Driver's Licenses, Uniform Rules of the Road: Change Definitions, Penalties, and Procedures Relating to Driving Under the Influence of Alcohol and Drugs*

CODE SECTIONS: O.C.G.A. §§ 16-13-2, -21, -30 (amended), 17-6-1 (amended), 40-5-1, -55, -57, -63, -68, -82, -83, -121 (amended), 40-6-253 (new), 40-6-391, -391.1 (amended), 40-6-391.2 (new), 40-6-392 (amended)

BILL NUMBERS: HB 11, HB 63, HB 66, HB 129, SB 312

ACT NUMBERS: 532, 589, 590, 305, 472

SUMMARY: This package of bills makes it unlawful for any person to possess an open container of an alcoholic beverage while operating a motor vehicle. The level of alcohol concentration that constitutes driving under the influence is reduced to 0.10 grams, with a level of 0.06 grams for minors under the age of eighteen. The package provides for the publication of the name, address, and photograph of any person convicted a third time of driving under the influence of alcohol or drugs. The package provides for a six hour detention period for persons arrested for driving under the influence of alcohol and drugs and provides for criminal records checks for operators and instructors of DUI alcohol and drug use risk reduction programs.

EFFECTIVE DATE: July 1, 1991

### *History*

Public interest in new legislation addressing the problem of driving under the influence ("DUI") was stimulated by a series of well-publicized fatalities caused by alleged drunk drivers.<sup>1</sup> Convictions for DUI in

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1. In the trial of James Chester of Austell, convicted of killing two Cobb County teenagers in February 1989, prosecutors presented evidence that Chester had been

Georgia were at an all-time high in 1989,<sup>2</sup> even though the Georgia laws were among the most lenient in the country.<sup>3</sup> Habitual offenders were responsible for a large percentage of accidents and fatalities among those charged with driving under the influence.<sup>4</sup>

With public support behind the push for stronger laws in this area, the debate centered around which measures might be most effective in correcting the problem. A poll found the State's residents divided over the best way to attack the problem of drinking and driving.<sup>5</sup> Forty-three percent supported stricter laws, twenty-nine percent supported better enforcement of current laws, and twenty-two percent favored more treatment for problem drinkers.<sup>6</sup>

The Governor proposed a package of four bills, which provided for: (1) publication of drunken drivers' names, addresses, and photographs in their local newspapers; (2) immediate suspension of offenders' licenses upon arrest; (3) a "zero-tolerance" provision lowering the legal blood-alcohol limit for minors to 0.02 grams; and (4) confiscation and forfeiture of automobiles driven by habitual violators arrested for driving under the influence.<sup>7</sup> The Governor noted the support of citizens as expressed in public opinion polls and of groups like Mothers Against Drunk Driving, but some criticized his package as too weak.<sup>8</sup>

A total of thirty-seven anti-DUI bills were introduced during the 1991 General Assembly.<sup>9</sup> Many of the bills were put together in compromise

arrested for DUI seven times and that three of those incidents involved hit-and-run accidents. Katie Long, *Repeat DUIs: A Georgia Killer*, ATLANTA J. & CONST., Dec. 16, 1990, at A1. In December 1990, a Clayton County mother and her infant daughter were killed in an accident with a man who registered nearly twice the legal limit for blood alcohol concentration; the man had pleaded no contest to a DUI charge four years earlier. *Id.*

2. 77,443 people were convicted of DUI in Georgia in 1989. Adam Gelb, *Tragic DUI Deaths are Cited in New Push for Tougher Laws*, ATLANTA J. & CONST., Feb. 4, 1991, at A5.

3. Georgia's legal blood alcohol level of 0.12 in 1990 was among the highest in the country. *Id.* Most states also had an open container bill, which Georgia first passed in 1991. *Law Makers '91* (WGTV television broadcast, Feb. 7, 1991) (videotape available in Georgia State University College of Law Library).

4. In 1989, one of every 10 fatal car crashes in Georgia, and three of every 10 that involved alcohol were caused by persons previously convicted of drunken driving. Long, *supra* note 1, at A1. Habitual violators were responsible for 21% of alcohol-related fatal accidents in 1989, although they comprised only two percent of the state's drivers. *Id.*

5. Long, *supra* note 1, at A1.

6. *Id.*

7. Gelb, *supra* note 2, at A5.

8. MADD representatives generally supported the push for stronger DUI laws, but expressed concerns that the proposed legislation did not go far enough. Adam Gelb, *House Accused of 'Soft Talk' on DUI*, ATLANTA J. & CONST., Feb. 21, 1991, at F3.

9. *Law Makers '91* (WGTV television broadcast, Feb. 6, 1991) (videotape available in Georgia State University College of Law Library). Sen. Arthur B. "Skin" Edge, IV,

combinations, and the final package as passed included elements of many of the bills originally introduced.<sup>10</sup>

### *HB 11*

The Act adds a new Code section 40-6-253 which makes it unlawful for any person to possess an open container of an alcoholic beverage while operating a vehicle.<sup>11</sup> This section defines an open container as any container which is immediately capable of being consumed from or the seal of which has been broken.<sup>12</sup> An open container shall be considered to be in possession of the driver of the automobile if the container is not in the possession of a passenger and is not in a locked nonpassenger area of the vehicle, including the glove compartment or trunk.<sup>13</sup>

The Act provides penalties for violation of the section, including a fine not to exceed \$200,<sup>14</sup> and two points assessed against the offender's license under an amendment of Code section 40-5-57(c)(1)(A).<sup>15</sup> County or municipal ordinances imposing more stringent controls on possession of alcoholic beverages in vehicles are not preempted.<sup>16</sup>

HB 11 was one of several open container bills introduced during the session. For instance, SB 52 would have included a prohibition against possession of alcohol by passengers.<sup>17</sup> SB 52 was amended in the Judiciary Committee to eliminate the prohibition against passenger possession, but the Senate never passed the bill.<sup>18</sup>

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Chairman, Senate Special Judiciary Committee, Senate District No. 28, said, "The DUI problem in our state is epidemic. It's getting worse and not better. I think the sheer volume of legislation shows that people are ready for us to do something about this problem." *Law Makers '91* (WGTV television broadcast, Feb. 7, 1991) (videotape available in Georgia State University College of Law Library).

10. Interview with Rep. Bobby Parham, Chairman, House Motor Vehicles Committee, House District No. 105, in Atlanta (Apr. 4, 1991) [hereinafter Parham Interview].

11. O.C.G.A. § 40-6-253(b) (1991).

12. O.C.G.A. § 40-6-253(a) (1991).

13. O.C.G.A. § 40-6-253(b) (1991).

14. O.C.G.A. § 40-6-253(c) (1991).

15. O.C.G.A. § 40-5-57(c)(1)(A) (1991).

16. O.C.G.A. § 40-6-253(d) (1991).

17. SB 52, as introduced, 1990 Ga. Gen. Assem.

18. *Law Makers '91* (WGTV television broadcast, Feb. 7, 1991) (videotape available in Georgia State University College of Law Library). Sen. Roy L. Allen, Vice-Chairman of the Judiciary Committee, Senate District No. 2, suggested that back-seat passengers should not be included in the provision since the bill included exemptions for recreational vehicles and buses. *Id.* After Sen. Allen's amendment eliminating passengers was adopted, Sen. Chuck Clay, Senate District No. 37, sponsor of the bill, said, "I think it severely damages the effectiveness of a bill if you leave that type of glaring loophole sitting there. Almost every state in the union has an open container bill that reads exactly like the one I introduced, and they haven't experienced the kinds of problems I think were expressed here." *Id.* He suggested a compromise that would put the burden on the driver to prove that an alcoholic beverage was not in his possession. *Id.*

As introduced, HB 11 simply provided that an operator of a vehicle in possession of an alcoholic beverage would be guilty of a misdemeanor; it specified no penalty and did not allow more stringent local ordinances.<sup>19</sup> The House Committee on Regulated Beverages substitute weakened the bill, eliminating the requirement that alcoholic beverages be in locked nonpassenger areas to be considered out of the driver's possession, and limiting the fine to \$25.<sup>20</sup> An amendment was proposed to provide for the preservation of local ordinances, but the amendment was defeated.<sup>21</sup> Much of the House floor debate focused on the lack of a penalty against passengers, and one representative noted that a driver could avoid punishment by simply passing an alcoholic beverage to a passenger.<sup>22</sup>

The Senate Committee substitute provided that four points be assessed against an offender's license under Code section 40-5-57, reasserted language requiring alcoholic beverages to be in locked nonpassenger areas, eliminated the maximum \$25 fine, and allowed for more stringent local provisions.<sup>23</sup> The conference committee substitute retained the bulk of those changes, reducing the points assessment to two and providing for a maximum fine of \$200.<sup>24</sup>

### HB 63

As finally passed, HB 63 incorporated provisions from several DUI bills which were presented to the House Motor Vehicles Committee,<sup>25</sup>

19. HB 11, as introduced, 1991 Ga. Gen. Assem.

20. HB 11 (HCS), 1991 Ga. Gen. Assem. The substitute also provided that a violation would not be considered a violation for purposes of O.C.G.A. § 40-5-57 (section providing for suspension and revocation of licenses and providing points system). *Id.*

21. Telephone Interview with Rep. Dick Lane, House District No. 27 (Apr. 3, 1991) [hereinafter Lane Interview]. Rep. Lane said that he inadvertently omitted the exception for tougher local ordinances, and suggested that some legislators voting in favor of the original bill were attempting to ease local open container laws. *Id.* "It turned out that some of my supporters weren't really my supporters." *Id.*

In Albany, the fine for violating the local open container law was \$500. In Chatham County, fines up to \$1000 could be levied against both the driver and the passengers. Adam Gelb, 'Slip' may undermine open container laws, ATLANTA J. & CONST., Feb. 26, 1991, at C3. Nona C. Gibbs, Fulton County president of Mothers Against Drunk Driving, said House leaders used Rep. Lane's mistake in an attempt to weaken local laws. *Id.*

22. *Law Makers '91* (WGTV television broadcast, Feb. 26, 1991) (videotape available in Georgia State University College of Law Library). The bill's sponsor, Rep. Dick Lane, said that it was "politically impossible" to include passengers in an open container bill at this time. Lane Interview, *supra* note 21. Rep. Lane said that he felt the mere fact this conduct was illegal would prove to be a deterrent to potential offending drivers. *Id.* "I've seen people drive by the police station in East Point while they were drinking beer— at least they can't do that anymore." *Id.*

23. HB 11 (SCS), 1991 Ga. Gen. Assem.

24. HB 11 (CCS), 1991 Ga. Gen. Assem.

25. Parham Interview, *supra* note 10. Rep. Parham stated, "It was the hardest

and the legislation made sweeping changes in current DUI laws. The Act changed procedures and penalties for those convicted of driving under the influence, changed the legal blood alcohol concentration levels and presumptions arising from certain blood alcohol levels, changed penalty provisions applicable to offenders driving while a driver's license is suspended or revoked, and provided for the publication of the name, address, and photograph of persons convicted a third time of DUI.

Section one of the Act amends Code section 40-5-1, eliminating the distinction between treatment programs for first and second offenders, and including all such programs under the title "DUI Alcohol or Drug Use Risk Reduction Program."<sup>26</sup> The Act provides that such programs be certified by the Department of Human Resources, and specifies that such a program shall consist of three components: assessment, education/intervention, and intensive intervention.<sup>27</sup> The Act provides that upon a first conviction or plea of *nolo contendere* to a violation of the Code, the program shall administer the assessment component and either release the offender or refer him to another component.<sup>28</sup> A second offender must be referred to one of the other components after assessment, and may not simply be released.<sup>29</sup>

The Act further provides that any license suspended as a result of a conviction of driving under the influence remain suspended until that driver submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.<sup>30</sup> Another provision mandates that the court require an offender to surrender his driver's license before the court will accept a plea of *nolo contendere* to a charge of driving under the influence of alcohol or drugs.<sup>31</sup> Under this section, upon surrender of the license, the court is required to issue a temporary license expiring within 120 days, and the permanent license may not be returned until the court receives satisfactory proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.<sup>32</sup> These provisions were designed to insure that every driver convicted of DUI complete a program, so that the license could not be restored after the offender simply waited out the

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piece of legislation I've worked on in 17 years in the House. It's something nobody will like, but it's as good a bill as we could pass. Everybody criticized it, but everybody got something." *Id.*

26. O.C.G.A. § 40-5-1(14) (1991).

27. *Id.*

28. *Id.*

29. *Id.* The intent of this provision was to assure that all offenders were assessed, regardless of the number of offenses, so that a proper treatment program could be prescribed. Telephone interview with Valerie Hepburn, Assistant Commissioner of the Georgia Department of Human Resources (Apr. 5, 1991) [hereinafter Hepburn Interview].

30. O.C.G.A. § 40-5-63(1) (1991).

31. O.C.G.A. § 40-6-391.1(d) (1991).

32. *Id.*

suspension period.<sup>33</sup> Another facet of the package designed to encourage treatment allows a judge, at his discretion, to suspend up to one-half of the fine imposed against a third offender, conditioned upon the defendant's completion of a treatment program.<sup>34</sup>

The Act amended Code section 40-5-55(a) to reduce the legal blood alcohol concentration from 0.12 grams to 0.10 grams, the starting point for a conclusive presumption of intoxication.<sup>35</sup> A corresponding change was made in the presumptions arising from certain blood alcohol levels: a driver is now presumed to be under the influence of alcohol if his blood alcohol level is 0.08 grams or more.<sup>36</sup> The legal limit for those under the age of eighteen was reduced from 0.12 to 0.06 grams.<sup>37</sup>

Penalties for driving with a suspended or revoked license were increased so that the fine for a first offense was increased to a minimum of \$500 to \$1000 maximum,<sup>38</sup> from a \$500 maximum,<sup>39</sup> in addition to a period of imprisonment from two days to six months.<sup>40</sup> For a second offense, the penalty was increased to a minimum fine of \$1000 to a maximum of \$2500, with a period of imprisonment from ten days to twelve months.<sup>41</sup>

Perhaps the most controversial provision in the entire package requires the clerk of the court in which a person is convicted for a third DUI offense to arrange for the newspaper publication of a notice of conviction, two inches long by one column wide.<sup>42</sup> The notice is to include a

33. Parham Interview, *supra* note 10. Rep. Parham noted that under the old law less than half of those sentenced to attend a treatment program actually completed such a program. *Id.* The licenses of offenders who ignored court orders were technically suspended, but the 12-month suspension period often elapsed before officials were able to determine that a suspension was in place. *Id.*

34. O.C.G.A. § 40-6-391(g)(2) (1991). Code Section 40-6-391(g)(1) allows a judge to order a third offender to pay a fine in installments if the fine would impose an economic hardship upon the defendant. O.C.G.A. § 40-6-391(g)(1) (1991).

35. O.C.G.A. § 40-5-55(a) (1991).

36. O.C.G.A. § 40-6-392(b) (1991). Under the Act, an alcohol concentration of 0.05 grams or less results in a presumption the person was not under the influence, and a concentration between 0.05 and 0.08 grams results in no presumption. *Id.* Rep. Parham felt that the 0.08 gram level for presumed intoxication was even more important than the reduction in the legal limit, because the presumption of intoxication would most often result in a conviction. Parham Interview, *supra* note 10.

37. O.C.G.A. § 40-6-391(k) (1991). The level for drivers of commercial vehicles is 0.04%. O.C.G.A. § 40-6-391(i) (1991).

38. O.C.G.A. § 40-5-121 (1991).

39. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-5-121(a) (Supp. 1990)).

40. O.C.G.A. § 40-5-121(a) (1991).

41. *Id.* The new section provides that a second offense shall be a high and aggravated misdemeanor. *Id.* The old section specified a maximum fine of \$1000. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-5-121 (Supp. 1990)).

42. O.C.G.A. § 40-6-391(j)(1) (1991). The photograph provision was probably the most debated section of the bill. Sen. Hildred Shumake, Senate District No. 39, said that the photo was not a deterrent, but was designed simply to embarrass people who make

photograph taken by the arresting law enforcement agency; the offender's name and address; the date, time, and place of arrest; and the disposition of the case.<sup>43</sup> The court must order the offender to pay an additional \$25 fine in order to pay for the publication.<sup>44</sup> This provision also provides immunity from civil and criminal liability for the court clerk, publishers of legal notices, and any other persons involved in publication of erroneous notices, provided that the publication was made in good faith.<sup>45</sup>

HB 63 originally contained only the provision requiring publication of the photograph, name, and address of persons convicted of a third DUI offense.<sup>46</sup> The House Committee on Motor Vehicles Substitute added an amendment to Code section 40-5-1 setting out the procedural aspects of the DUI Alcohol and Drug Use Risk Reduction Program, added the section lowering the permissible blood alcohol content to 0.10 grams, and reduced the level for a presumption of intoxication.<sup>47</sup> This substitute weakened the original bill, merely providing that the notices of conviction be made available to publishers of legal notices, and that such notices would include the name of the offender only.<sup>48</sup>

The House Committee substitute included a complex and lengthy new section allowing suspension of the driver's license of any person charged with driving under the influence of alcohol or drugs if: (1) the arresting officer had reasonable grounds to believe that the person had committed an offense subject to the implied consent provisions of Code section 40-5-55; (2) the person had been charged with willful refusal to submit to chemical analysis or with driving under the influence; and (3) the person was tested and met at least the level required for the presumption of driving under the influence.<sup>49</sup>

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mistakes. Hearing of Senate Special Judiciary Committee, Feb. 21, 1991, 1991 Ga. Gen. Assem. Sen. Roy Allen, Senate District No. 2, called the provision a "scarlet letter," and predicted that such a notice would follow the offender and his family for the rest of their lives. *Id.*

43. O.C.G.A. § 40-6-391(j)(1) (1991). For residents, the notice is to be published in the legal organ of the county in which the person resides. *Id.* For nonresidents, the notice is to be published in the legal organ of the county in which the arrest was made. *Id.*

44. O.C.G.A. § 40-6-391(j)(2) (1991).

45. O.C.G.A. § 40-6-391(j)(3) (1991).

46. HB 63, as introduced, 1991 Ga. Gen. Assem.

47. HB 63 (HCS), 1991 Ga. Gen. Assem.

48. *Id.* Rep. Dubose Porter, the sponsor of the bill, argued against this change during the House floor debate, noting that the Open Records Act already requires that such information be made available to newspapers. *Law Makers '91* (WGTV television broadcast, Feb. 26, 1991) (videotape available in Georgia State University College of Law Library). Rep. Porter felt the changes the bill went through in the committee weakened it considerably. Telephone Interview with Rep. Dubose Porter, House District No. 119 (Apr. 3, 1991) [hereinafter Porter Interview]. He said, "Ultimately, what came out of the House was not a strengthening of the DUI laws. The only thing that bill had was lowering [the legal blood alcohol level] to 0.10. But the final version put us in a place to negotiate some things that were very good." *Id.*

49. HB 63 (HCS), 1991 Ga. Gen. Assem.



This section required the arresting officer and any chemical analyst performing a test to submit sworn reports attesting to the facts which supported the arrest, and provided for a judicial officer to conduct a hearing to determine whether the above conditions had been met.<sup>50</sup> Upon a finding of probable cause, the judicial officer would order the arrestee to surrender his license, or would order the license forcibly seized, if necessary.<sup>51</sup> The driver's license would be immediately suspended for a period of at least ten days, after which time the offender could apply for the issuance of a temporary permit at a cost of \$35.<sup>52</sup> This section gave the person charged the right to request a hearing on the suspension within ten days, specifying the particular grounds for the challenge.<sup>53</sup>

After dilution in the House, the Senate Special Judiciary Committee substitute bolstered the impact of the bill, adding the section specifying increased penalties for driving with suspended or revoked licenses.<sup>54</sup> This substitute added an amendment to the section specifying how penalties are determined, so that every conviction within a ten-year period (instead of five) was counted toward the three-conviction habitual offender status.<sup>55</sup>

The Senate version of the bill also returned to the language of the original bill in requiring publication of a notice of a third conviction, including a photograph, with the price of the publication to be paid by the offender.<sup>56</sup> The substitute added a section reducing the permissible blood alcohol content for persons under twenty-one to 0.04 grams.<sup>57</sup> Also included was a provision prohibiting a plea of *nolo contendere* in cases in which a defendant had a blood alcohol content over 0.17 grams.<sup>58</sup>

The Conference Committee substitute completely eliminated the section which would have allowed an arresting officer with probable cause to immediately suspend an arrestee's license for ten days.<sup>59</sup> The reasons for this deletion included administrative problems, political trade-offs, and concerns about constitutionality.<sup>60</sup> The Conference Committee version

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* The accused would have the right to demand that his defense be heard by a superior court judge. *Id.*

54. HB 63 (SCSFA), 1991 Ga. Gen. Assem.

55. *Id.*

56. *Id.*

57. *Id.* The Governor's proposal had called for a limit of 0.02 grams for persons under the age of 21. Adam Gelb, *Tragic DUI Deaths Are Cited in New Push for Tougher Laws*, ATLANTA J. & CONST., Feb. 4, 1991, at A5.

58. HB 63 (SCSFA), 1991 Ga. Gen. Assem.

59. HB 63 (CCS), 1991 Ga. Gen. Assem.

60. Rep. Dubose Porter, sponsor of the bill, said that one of the primary aims of this provision was to reduce the superior court judges' workload by eliminating the

also rejected the Senate proposal that convictions during a ten-year period be counted toward habitual offender status,<sup>61</sup> preserving the former five-year threshold.<sup>62</sup>

The Conference Committee substitute set the legal blood alcohol limit for minors at 0.06 grams, rather than 0.04, but made this limit applicable only to minors under eighteen, rather than under twenty-one.<sup>63</sup> In a compromise, it was provided that no plea of *nolo contendere* should be accepted for persons under eighteen.<sup>64</sup>

### HB 66

HB 66 contained one of the major provisions proposed by the Governor, providing for the forfeiture of a motor vehicle operated by a person who has been declared a habitual violator, whose license has been revoked, and who is subsequently arrested for driving under the influence.<sup>65</sup> The bill provides procedures for the seizure and sale of forfeited vehicles and also provides protection for "parties in interest" without reason to foresee the violation.<sup>66</sup>

Any vehicle operated by a person whose license has been revoked as a habitual violator who is arrested for DUI is contraband and subject to forfeiture to the state.<sup>67</sup> Law enforcement agencies and officers

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requirement that they hear all cases involving license suspensions. Porter Interview, *supra* note 48. But he noted that the mechanics of the bill "were not very clear," and he felt that there was not adequate preparation in researching this section. *Id.* Rep. Bobby Parham, Chairman of the House Committee on Motor Vehicles, said that implementation would have been "administratively impossible." Parham Interview, *supra* note 10. Rep. Arthur B. "Skin" Edge, IV, Chairman of the Senate Special Judiciary Committee, said, "As far as I know, this would be the only criminal offense in the state of Georgia where you could have your license or other right taken away prior to being convicted." *Law Makers '91* (WGTV television broadcast, Feb. 6, 1991) (videotape available in Georgia State University College of Law Library).

61. HB 63 (CCS), 1991 Ga. Gen. Assem.

62. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-6-391(c) (Supp. 1990)).

63. *Id.* Supporters of the Governor's "zero tolerance" provision saw it as a means, not only of preventing drinking and driving, but also as an aid to enforcement of the drinking age. Rep. Dubose Porter said the floor amendment was an "attempt to get the difference in drinking age to mean something in Georgia." *Law Makers '91* (WGTV television broadcast, Feb. 26, 1991) (videotape available in Georgia State University College of Law Library). Opponents of this measure argued that it was unfair for 19-year-old soldiers fighting in the Persian Gulf War to be judged by a different standard than other adults. Parham Interview, *supra* note 10.

64. *Law Makers '91* (WGTV television broadcast, Feb. 26, 1991) (videotape available in Georgia State University College of Law Library).

65. O.C.G.A. § 40-6-391.2 (1991).

66. *Id.* While not specifically defined in the Act, "parties in interest" include the owner, lessee, or any person having a duly recorded security interest in or lien on the motor vehicle. *Id.*

67. O.C.G.A. § 40-6-391.2(a) (1991). Rep. Dubose Porter, sponsor of the bill, said,

discovering a violation of the section are required to seize the vehicle immediately, and the vehicle must be delivered to the district attorney whose circuit includes the county in which the seizure is made, or to his duly authorized agent, within twenty days.<sup>68</sup>

Within sixty days of the seizure, the district attorney is required to file an action for condemnation with the superior court of the county in which the vehicle is seized or detained.<sup>69</sup> The Act provides procedures for filing the action.<sup>70</sup> Notice is required to be given by any means of service provided in Title 9 of the Code or by delivery of a copy of the complaint and summons by certified mail to the owner, lessee, or any person having a duly recorded security interest in or lien on the vehicle.<sup>71</sup>

Under Code section 40-6-391.2(d), any party in interest may appear and file an intervention or defense within thirty days from the date of service.<sup>72</sup> In its discretion, a court hearing such a defense may allow any party to give bond and take possession of the vehicle.<sup>73</sup> To protect innocent parties, the Act provides that a rented or leased vehicle shall not be subject to forfeiture unless it is established by a preponderance of the evidence that the owner knew or should have known the operator was a habitual violator and knew or reasonably should have known of the operation of the vehicle in a manner which would subject it to forfeiture.<sup>74</sup>

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"The problem you have with a lot of crimes is the habitual violator. You've already sent him to prison, he's been to clinics, and what else is left? You've got to get him off the road, and the only way to do that is to take his automobile." Porter Interview, *supra* note 48. Sen. Mark Taylor, assistant administration floor leader, touted the bill as deterring not only the offender, but also those who might enable him to drive. "We want to send a message to habitual violators, but also to lenders, and family or friends who might lend a car to a habitual violator." *Law Makers '91* (WGTV television broadcast, Feb. 6, 1991) (videotape available in Georgia State University College of Law Library).

68. O.C.G.A. § 40-6-391.2(b) (1991).

69. O.C.G.A. § 40-6-391.2(c) (1991).

70. *Id.* "The action shall describe the motor vehicle and state its location, present custodian, and the name of the owner, if known, to the duly authorized agent of the state; allege the essential elements of the violation which is claimed to exist; and conclude with a prayer of due process to enforce the forfeiture." *Id.*

71. *Id.* This section declares that notice to the titleholder is deemed adequate if a copy of the complaint and summons is mailed to the titleholder at the address set out in the title and an additional copy is sent by certified mail to the firm, person, or corporation which holds the current registration for the motor vehicle, and the complaint is advertised once a week for two weeks. *Id.*

72. O.C.G.A. § 40-6-391.2(d) (1991).

73. O.C.G.A. § 40-6-391.2(e) (1991). Rep. Dubose Porter noted that the provision allowing bond was a compromise, included partly to alleviate constitutional concerns and protect innocent parties. "We looked at that very carefully, and we already have laws where you can confiscate vehicles for night deer hunting, and that was upheld. The protections are there for constitutional concerns." Porter Interview, *supra* note 48.

74. O.C.G.A. § 40-6-391.2(d)(2) (1991). The district attorney is required to immediately contact a rental or leasing company whose vehicle is seized and not subject to forfeiture to inform the company that it may take possession. *Id.*

If no defense or intervention is filed within thirty days from the date of service on the condemnee, the court will enter judgment, and may direct that the property be sold by judicial sale or by "any commercially feasible means."<sup>75</sup> The Act directs that proceeds from such sales be deposited into the general treasury of the state or of any governmental unit which seized the vehicle, but specifies that such funds should be applied to fund alcohol and drug treatment, rehabilitation, and prevention and education programs after making the necessary expenditures for (1) costs incurred in the seizure, (2) costs of the court and its officers, and (3) costs incurred in the storage, advertisement, maintenance, or care of the vehicle.<sup>76</sup>

The Act also includes a hardship provision which applies in cases in which a family's only vehicle is subject to forfeiture and the court determines that the financial hardship to the family as a result of forfeiture outweighs the benefit to the state.<sup>77</sup> In such cases, the court may order title to the vehicle transferred to another family member who is licensed and who requires the vehicle for employment or family transportation purposes.<sup>78</sup>

As introduced, the bill was much stricter, providing for forfeiture of vehicles operated by a person with three or more DUI arrests during the previous five years, with two or more arrests resulting in convictions.<sup>79</sup> Under the original bill, a plea of *nolo contendere* was counted as a conviction.<sup>80</sup> The original version did not have a family hardship provision.<sup>81</sup>

The House Committee on the Judiciary substitute amended the section to apply only to operators previously declared habitual violators with licenses revoked, and deleted the section providing that *nolo contendere* pleas count as convictions.<sup>82</sup> The substitute also added the hardship provision.<sup>83</sup> A Senate Committee Substitute would have eliminated the hardship provision,<sup>84</sup> but the Senate conceded and passed the House version.

75. O.C.G.A. § 40-6-391.2(f) (1991).

76. O.C.G.A. § 40-6-391.2(g) (1991).

77. O.C.G.A. § 40-6-391.2(i) (1991).

78. *Id.* This provision specifies that such a transfer shall be subject to all valid liens and may be granted only once. *Id.*

79. HB 66, as introduced, 1991 Ga. Gen. Assem.

80. *Id.*

81. *Id.*

82. HB 66 (HCS), 1991 Ga. Gen. Assem.

83. *Id.* Rep. Dubose Porter said members of the House Judiciary Committee felt that a hardship clause was needed in order to protect innocent members of families with vehicles subject to forfeiture. In his opinion, the hardship exception could be applied in very few cases. "I don't think it weakens the bill much," he said. Porter Interview, *supra* note 48.

84. HB 66 (SCS), 1991 Ga. Gen. Assem.

*HB 129*

The Act amends Code section 17-6-1 to provide for a period of detention for a person charged with driving under the influence of alcohol or drugs.<sup>85</sup> It provides that any person arrested for DUI whose alcohol level at the time of arrest exceeds the legal limit may be detained for a period of time up to six hours after booking and prior to being released on bail or on recognizance.<sup>86</sup> This new section<sup>87</sup> is an exception to a previous Code section, providing that at no time shall a person charged with a misdemeanor be refused bail.<sup>88</sup>

As it passed both houses, the bill underwent no substantive changes. As introduced, the bill allowed detention of an intoxicated person charged with DUI for a period of up to twelve hours.<sup>89</sup> The House Special Judiciary Committee set the period of detention at between four and twelve hours,<sup>90</sup> and a floor amendment clarified the provision by specifying that the person's alcohol concentration must exceed the legal limit.<sup>91</sup> The Senate Special Judiciary Committee reverted to the language specifying a period of up to twelve hours, but an amendment set the period at up to six hours.<sup>92</sup> This provision seems to have been intended to keep those arrested for DUI from getting back behind the wheel while still intoxicated.<sup>93</sup> However, some legislators expressed concerns that the provision offered the potential for abuse in giving great discretion to law enforcement officials.<sup>94</sup>

85. O.C.G.A. § 17-6-1(b)(2) (Supp. 1991).

86. *Id.*

87. *Id.*

88. O.C.G.A. § 17-6-1(b)(1) (Supp. 1991). The section provides that all offenses not included in section (a) are bailable by a court of inquiry. *Id.*

89. HB 129, as introduced, 1991 Ga. Gen. Assem.

90. HB 129 (HCS), 1991 Ga. Gen. Assem.

91. *Id.*

92. HB 129 (SCS), 1991 Ga. Gen. Assem.

93. *Law Makers '91* (WGTV television broadcast, Feb. 27, 1991) (videotape available at Georgia State University College of Law Library). Sen. Chuck Clay expressed concerns that the law might be misused, but Senate Special Judiciary Chairman Arthur E. "Skin" Edge, IV, replied that the concern with citizen safety was greater, noting that there have been instances in which a person arrested for DUI had been released and had driven away intoxicated. *Id.*

94. Black members of the Senate worried that the law would be applied arbitrarily. Charles Walston, *Senate Okays Bill to Allow Delay of Bail in DUI Cases*, ATLANTA J. & CONST., Feb. 28, 1991, at C3. Sen. Charles Walker said police should be required to hold all DUI arrestees for a specified period in order to prevent abuse. *Id.* It was suggested that the law would be used disproportionately against blacks. *Id.* The bill passed the Senate 50-5, with all five negative votes by black senators. *Id.* In floor debate, Sen. Tommy C. Olmstead, District No. 25, proposed that the provision mandate a specified holding period for all DUI arrestees. *Law Makers '91* (WGTV television broadcast, Feb. 27, 1991) (videotape available at Georgia State University College of Law Library). Special Judiciary Chairman Arthur "Skin" Edge, IV, noted that Sen. Olmstead's proposal would

*SB 312*

Senate Bill 312 changed laws in two areas relating to driving under the influence: (1) it changed certain procedural and administrative aspects of the DUI alcohol or drug use risk reduction programs, and (2) it increased penalties for school bus drivers convicted of driving under the influence while driving school buses. The Act requires the Department of Human Resources (DHR) to conduct a criminal records check on anyone applying as an instructor or operator of a DUI program, and to send copies of the applicant's fingerprints to the Georgia Crime Information Center and the Federal Bureau of Investigation.<sup>95</sup> No applicant may be certified who has been convicted of a felony.<sup>96</sup> The DHR is authorized to promulgate rules regarding certification requirements.<sup>97</sup>

The Act designates DHR as the agency responsible for establishing criteria for approval of DUI programs.<sup>98</sup> It authorizes the Department of Corrections to operate DUI programs in facilities where offenders are not authorized to participate in such programs in the community as long as those facilities meet certification requirements.<sup>99</sup> The bulk of the section retains changes made in 1990 legislation, giving broad supervision powers to DHR.<sup>100</sup>

The Act also sets forth special penalties for school bus drivers convicted of driving under the influence while driving a school bus.<sup>101</sup>

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constitute punishment before conviction, and the person might not pose a threat to society. *Id.* Rep. Dick Lane, a cosponsor of the measure, said he was uncertain whether the constitutionality of such a provision would be upheld. Lane Interview, *supra* note 21. He noted that the General Assembly was under pressure on all fronts, intensified by the media, to put forth a quantity of DUI legislation. "It's kind of like, well, we've done our job— now let the courts do theirs." *Id.* Under a 1967 Georgia Attorney General Opinion, an arbitrary period of detention for a person accused of public drunkenness is unlawful under Georgia law. 1967 Op. Att'y Gen. 214. "[T]he intoxicated person is entitled to be released into the custody of a responsible person as soon as bail is allowable and paid." *Id.*

95. O.C.G.A. § 40-5-82(e) (1991). According to Valerie Hepburn, Assistant Commissioner of the DHR, the purpose of this section was to enable the agency to check national convictions. Hepburn Interview, *supra* note 29.

96. O.C.G.A. § 40-5-82(e) (1991).

97. *Id.*

98. O.C.G.A. § 40-5-83(e) (1991). DHR was given authority over these programs in 1990. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-5-83(c) (Supp. 1990)).

99. The 1990 amendment to this section provided that government agencies could operate such programs, but that no new programs could be funded in governmental subdivisions which had existing private programs. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-5-83 (Supp. 1990)). This was interpreted to include Department of Corrections programs, and in many cases, prisoners were unable to get licenses or find work until they attended these programs after release. Hepburn Interview, *supra* note 29. This provision was changed to alleviate this problem. *Id.*

100. 1990 Ga. Laws 2048 (formerly found at O.C.G.A. § 40-5-83 (Supp. 1990)).

101. O.C.G.A. § 40-6-391.2 (1991). According to Sen. Quillian Baldwin, Jr., sponsor of

The penalty for a violation is imprisonment for a period of from one to five years and a fine of not less than \$1000 nor more than \$5000, or both.<sup>102</sup>

The original bill included only the school bus driver penalty provision, but the DHR housekeeping measures from HB 358 were incorporated.<sup>103</sup> The Senate Judiciary Committee omitted a portion of the school bus driver section which included a plea of *nolo contendere* as a conviction.<sup>104</sup>

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the bill, this measure was proposed in response to an incident in which a school bus driver was convicted of DUI in Troup County. Telephone Interview with Sen. Quillian Baldwin, Jr., Senate District No. 29 (Apr. 5, 1991). The driver was subsequently terminated, but many local residents felt that there should be a more severe penalty. *Id.*

102. O.C.G.A. § 40-6-391.2 (1991).

103. Hepburn Interview, *supra* note 29. SB 312, as introduced, 1991 Ga. Gen. Assem.

104. O.C.G.A. § 40-6-391.2 (1991).